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COUNTER-APPEAL;

IN

Answer to Mr. FOOT.

[PRICE ONE SHILLING.]

Countess of Pembroke



Added to Mr. Foot

[Place One Shilling]

A
COUNTER-APPEAL
TO THE
PUBLIC,

Touching the DEATH of

GEORGE CLARKE;

IN ANSWER TO

Mr. ^KF O O T.

THE SECOND EDITION.

L O N D O N :

Printed for J. ROSON, No. 54, St. Martin's le Grand,
Newgate Street.

M DCC LXIX.

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PUBLIC

DEATH OF



GEORGE CLARKE

IN ANSWER TO

MR. F. O. T.

THE SECOND EDITION

LONDON

Printed by J. Johnson, 25, St. Martin's Lane.

1844

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C O U N T E R - A P P E A L .

“ **O** F T E N as appeals on private grievances are laid before the public, it is seldom that they are brought to that tribunal with propriety. One of the cases in which they are least exceptionable, is, when the party appears as defendant. If public outrage be added to personal injustice, the impartial reader will receive with benignity, from the friends of the injured person, a claim to their candour, if supported by argument, and offered with decency. It might even be justified,

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stiffable, with regard to the accuser, to retort railing with invective ; but the latter method not only disgraces a good cause, but would imply a defect of capacity in the judges, as if their sentence were to be extorted by clamour."

Mr. Foot complains of ill-treatment, and the writer of his appeal (for Mr. Foot will hardly say that he penned it himself, tho' he has signed it,) is not very tender, but on the contrary is very severe on Mr. Bromfield.—But who has ill-treated Mr. Foot ? When was it ? Has Mr. Bromfield done it ?—That does not appear—then why so severe on Mr. Bromfield ? he was only *one* of the examining surgeons. Does Mr. Foot envy him his extensive practice ? Does he seek to wound his reputation ? Or does he want to be made surgeon in the room of Mr. Bromfield,

to

to the most amiable and virtuous princess on earth, I mean her Royal-highness the Princess Dowager of Wales?

Mr. Foot would seem to insinuate, that the court of examining surgeons is an infringement of the liberties of the people, by controuling the verdict of three juries. May be so, tho' I very much doubt its being any infringement; yet I would rather undergo the inconveniencies of such infringement, if it be one, than an innocent man should lose his life. But how is it an infringement? Is it in its institution? — Had the examining surgeons confirmed Mr. Foot's opinion, he would not have called theirs an infringement of the constitution. And yet if it is so in one case, it is equally so in the other. But they differed from Mr. Foot; and so because he cannot, or does not chuse,

to contend with them scientifically, he would inflame the minds of the people, by artfully endeavouring to represent the meeting of the examining surgeons, as a breach of the constitution.

What was the case respecting admiral Byng? The court martial, to whom the trial of his offence was committed, condemned him, "because, (as they said,) they were under a necessity of doing so, by reason of the letter of the law." And again they said, in their letter to the king, "that for the sake of their consciences, as well as in justice to the prisoner, they most earnestly recommended him to his majesty for mercy." All further enquiry into the case was precluded by the court martial being under an oath of secrecy. But it was offered to release them from their oath of secrecy, "in order to disclose

disclose the grounds on which they passed sentence of death on the admiral." Was not this in effect controuling the verdict of the admiral's jurors; at least, was it not rendering it subordinate to a subsequent determination? Nay, was it not doing more, was it not superseding an oath also?—Yet this was never by any party, (and parties ran as high then as they do now) called an infringement of the constitution.—Why?—because it was obviously an attempt to assist the constitution, in promoting the most full enquiry, for the impartial execution of justice.

How often do we hear of motions in Westminster-hall for *new trials*; what are all these but controuling the verdicts of juries: and what is the plea for these new trials; just the same as
that

that for the examining surgeons: because there had been some defects in the former trial; that there was new matter, or new evidence, since discovered, which had it been produced on the first trial, might have induced the jury to find a contrary verdict. To supply this defect was manifestly the view of convening the surgeons at Surgeons-hall; and who so proper to supply it, as surgeons; all men of eminence, and of acknowledged skill in their profession.

There seems to have been great caution in the ministry. They do not advise a precipitate exertion of the royal prerogative to pardon: but they appoint an enquiry, whether the convict prisoners were objects worthy of it. And it was not till after such enquiry

enquiry was made, that the royal mercy was extended them.

If I were disposed to compliment the present ministry, I could do it to a very great degree: but I am not. The fact is of such a nature and complexion, that it will support itself.

Did not Mr. ———, accompanied by another friend to the prosecution, apply that very night that the men were convicted, or at farthest the next day, for a pardon of them? Is it not plain from this circumstance, which is a very material one; that Mr. who was certainly in the secret, had great doubts concerning the conviction? Such an application coming from a known friend to the prosecution, might well encourage a minister to think of advising a pardon. Yet here the administration do not chuse to rest their opinion;

opinion ; they only advise a respite, till an enquiry is made. What is properly the question before the ministry ? Clearly this, Whether such application ought to be complied with ? But this was not the only application for a pardon ; that of the Hon. B. W. and S. W. M. was more respectable, two gentlemen of character, and in firm opposition to the present ministry. Yet it was not till after this second attempt had been made, that the administration thought fit to convene the surgeons. When such repeated applications came from the other side, administration may be fairly justified in directing an enquiry into the merits of the case.

Mr. Foot has to thank his own friends, I mean the friends of his cause, or at least a part of them, for the imputation, which he says has been

been thrown on his character; and Mr. Bromfield has to thank the same friends, who, by their applications for a pardon, occasioned the surgeons enquiry, for the unprovoked and unmerited abuse of Mr. Foot's scribe.

The examining surgeons report their opinion; and upon that report the convicts are pardoned, agreeable to the solicitations which had been made for that purpose.—Is any thing that Mr. Foot has asserted, more than matter of *opinion*? He is of *opinion*, that Clarke died of the blow he received. The examining surgeons, who are at least as respectable as Mr. Foot, and as eminent in their profession, are of a different *opinion*, that had proper care been taken of Clark, he might still have been alive. The whole is a difference of *opinion*. It is

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no new thing to see the most eminent of men differ in opinion. The learned judges have done it upon the bench ; the most able ministers have done it in the cabinet. But in these cases, as well as in that between the examining surgeons and Mr. Foot ; those who are to judge of this difference of opinion, who are to determine upon it, and who are to take some measure consequence of it, are always guided by the authority of the *most respectable side*. And can there be any doubt which side an impartial man would take in this case ? Whether he would yield to the *single* opinion of Mr. Foot ? or the *united* opinion of Messrs. Cowell, Bromfield, Crane, Ranby, Hawkins, Middleton, Fullager, Younge, and Pott ?

I do

I do not find even in Mr. Foot's account of his examination at surgeons-hall, the least expression drop from any of the surgeons, to the injury of Mr. Foot. Yet Mr. Foot is greatly enraged with the conduct of these surgeons—because they differed from him.

One of those gentlemen has exculpated himself from the foul aspersions which had been repeatedly cast upon him, in the public papers. And it would have become Mr. Foot, since he is so very angry with Mr. Bromfield, to have taken some notice of that gentleman's vindication of himself, which appeared in the papers several days before Mr. Foot's appeal. Mr. Foot should have answered it, as it contains a flat contradiction to one of the many falsehoods which have

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been

been industriously circulated by Mr. Foot's admirers; and a very material fact, sufficient for a surgeon of his reputation and skill, to form an opinion upon. Until Mr. Foot does answer this paper, the dispassionate part of the world will incline to Mr. Bromfield.—Mr. Bromfield's vindication, together with the paper which gave rise to it, I shall here transcribe.

*To the Court of Examiners of the Surgeons
Company.*

Mr. Benjamin Cowell.

William Bromfield, Esq; Surgeon to her
Royal Highness the Princess Dowager of
Wales.

Mr. Stafford Crane.

John Ranby, Esq; Serjeant Surgeon to
his Majesty.

Cæsar Hawkins, Esq; ditto.

David Middleton, Esq; ditto.

Mr. Christopher Fullager.

Mr. Robert Younge.

Mr. Percival Pott.

* Mr. Robert Adair, Surgeon to the
Third Regiment of Foot Guards.

GENTLEMEN,

DOES not Mr. Foot depose upon oath,
in the trial of Balf and M'Quirk, for
the murder of Mr. Clark,—That his *dura*
mater was inflamed, blood extravasated be-
tween that membrane and the *pia mater*,

* This Gentleman was not present, and in another List,
Mr. Gregory is put instead of Mr. Adair.

the

the *pia mater* not only inflamed, but ruptured also : and that the wound received on his head was the cause of his death ?

If false—Has not Mr. Foot been guilty of the grossest ignorance, or the foulest perjury ?—But from whence these infamous imputations ?—Do they not arise from your joint opinion, that the facts he relates are false, and that Clark's death was not occasioned by the Wound received upon his head ?

If, by the ignorant or perjured deposition of Mr. Foot, two innocent men were found guilty of the murder of Mr. Clark, a court of Justice not only troubled with a long and tedious trial, but deceived at the same time by his evidence ; what does he merit less than M'Quirk, whose life has been almost miraculously preserved, by the new and happy medium of the Court of Examiners ?

But if, on the other hand, a murderer has escaped justice, is let loose on the public, and the clemency abused, in consequence of your opinion that this wound of Clark's
was

was not mortal, or the cause of his death, what do you not deserve ?

Let me ask, whether (if there be in nature a possible mortal wound) an extravasation of blood between the *dura* and *pia mater*, and a rupture of the *pia mater* itself, does not come under that denomination ? Is not this definition established by writers of the best credit, by constant practice and observation, and by innumerable evidences in judicial anatomy ? What is the result ; but that this wound of Clark's was absolutely mortal *per se* ? Nor does this rest upon a simple affirmation, which might well enough and effectually enough be contrasted with your simple opinions ; but is founded on a basis of truth and reality, which the Court of Examiners can neither subvert nor destroy.

It is allowed, that some wounds, mortal in themselves, are some times, though but seldom, cured by the art of surgery. It appears from the Gazette, that William Bromfield, Esq; Surgeon to her Royal Highness the Princess Dowager of Wales, attended Clark from the first. Mortal
Blows,

Blows, and wounds of the head, do not always speedily discover their fatal effects ; they therefore require the utmost attention, as well as the utmost skill, preventive and curative.—Let me ask then, How did Mr. Bromfield attend, and what did he do for this man whilst under his care ?—Was he frequently and plentifully bled ?—If a strict regard was paid to symptoms (had he no symptoms ?) why was not the trepan applied ?—the only means by which a chance of life could be given ? But may it not be shrewdly suspected, that Mr. B——d's many engagements deprived him of that advantage ? But suppose an omission in life, why did he not inspect the head of his deceased patient ? Did not duty to his God, King, and Country, demand this ; that he might have been qualified, to give evidence in a matter of such importance as Murder ? How then could he pretend, several weeks afterward, to take the lead, and direct the opinions of the Court of Examiners, in an affair wherein they were still less able to form a true idea than himself ? If the Court of Examiners cannot set the part they

they have acted in a better light than it now appears to the world, will they not expose themselves to the censure of all mankind?

An answer to these queries and allegations are expected, and demanded, by every honest man in the kingdom.

I am, GENTLEMEN,

As far as Truth and justice shall appear, more or less,

your most obedient, humble servant,

CHIRURGICUS.

To the PRINTER.

Conduit-street, March 18, 1769.

I was this day shewn a letter in your paper, signed Chirurgicus, on which I shall make no further comments, but to disabuse *the public*, in respect to one *allegation* relative to *myself*. It is said, as a quotation from the Gazette, that “ I attended Clark from the first.” Nothing can be falser than this assertion, as I never saw Clark till Tuesday, about noon, the 13th of December 1768, the sixth day, as I was told, from the blow being given. I then direct-

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ed such things as I thought proper for his immediate relief, and sent my son in the afternoon to know the effect of the medicines, who told me the clyster *only* had been given. The next morning, Wednesday the 14th, notice was sent me that the man died in the night.

These facts being known, the absurdity of the subsequent queries, contained in the letter, must be too obvious to stand in need of any reply.

I hope, for the future, your correspondents, as well as yourself, will be better informed of facts before you attempt to traduce my character; which, I flatter myself, has hitherto been, and will remain unimpeached, for want of integrity, in my profession.

W. BROMFIELD.

Besides Mr. Bromfield's Answer to Chirurgicus, there appeared in a few days after the following, which deserves some notice here.

‘ Does not Mr. Foot, says this writer, depose upon oath, that Mr. Clark’s dura mater was inflamed, blood extravasated between that membrane and the pia mater, the pia mater not only inflamed but ruptured also ?’

He does not. That part of Mr. Foot’s deposition, to which the letter-writer refers, is vague and indefinite, his judgment, with respect to the cause of Mr. Clark’s death is explicit and decisive.

That the public may not be deceived by unfair representations, it is necessary to observe, that at the time of Mr. Clark’s illness, a fever prevailed, attended with symptoms similar to those under which he laboured. In this fever, which is often fatal, the same morbid appearances are found after death, which the letter-writer supposes Mr. Foot to have described.

When this is explained, and when it is considered that Mr. Clark did not complain for some days after he received the blow, that he was then seized with the usual symptoms of a malignant fever, and that the appearances which Mr. Foot describes, if this evidence has any meaning, are exactly such as might have been occasioned by that disease, it will be difficult to persuade the unprejudiced part of mankind, that that blow which Mr. Clark received was absolutely the cause of his death.

Many cases occur, where it is impossible to decide positively concerning the cause of death ; and in every doubtful case, clemency ought to prevail, since it is better that a guilty person should escape by a favourable representation of the case, than that an innocent person should unjustly be condemned to death.

The letter-writer's questions concerning the consequences of Mr. Clark's wound, are founded on an imaginary representation, not on Mr. Foot's evidence, and therefore can have no weight.

MEDICO-CHIRURGUS.

I will now proceed to take some notice of what were the *real* causes of Mr. Clarke's death.

He might formerly, for it does not appear to the contrary, have been a sober, but was he not lately, an idle dissipated young man? He went to Brentford, though no freeholder. A riot happened; and he received a stroke, or a blow, from some unknown person. It does not appear to this day, that Macquirk ever struck him, or that they even knew each other. Yet, notwithstanding this blow, he walked afterwards to Isleworth, to Richmond, to Turnham-Green, and to London; drank rum and brandy at most of these places: and that he attended his ordinary business, without any material inconvenience, for some days. He was
at

at length seized with a fever, the symptoms of which were highly inflammatory, and he died.

After his death, Mr. Foot, who had never seen him during his illness, was called in. Mr. Foot himself says, that he found no fracture: but the vessels of the brain were in general inflamed, a quantity of blood was found between the membranes, and the pia mater was ruptured. It was therefore his opinion, that Mr. Clarke's death was caused by the blow.

Upon this evidence the two men (Balfe and Macquirk) who were at Brentford on that day, were condemned for the murder of Clarke.

Then came the applications for a pardon, which have been already mentioned.——Some of the moderate men in opposition, are said to have reasoned

reasoned thus, on this affair ; “ whatever may be the construction of the law, ’tis certain that the convicts did not intend to murder any person ; and therefore their case strongly pleads the exertion of that part of the royal prerogative so wisely ordained to temper judgment with mercy. In them there was no premeditated malice, nor even momentary intention to kill any person.—It is very common for persons who have been drinking at elections to die, though they have not received a blow, but in such a habit of body a very slight wound may prove fatal ; and it is very probable, that if the unhappy man had been properly taken care of, he might have recovered.”

In consequence of the doubts which were thus suggested, the affair was
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ordered to be enquired into by ten eminent surgeons. It appeared to them, from the evidence produced, that Mr. Clarke's principal complaint had been a fever highly inflammatory, but unattended with any symptoms indicating pressure upon the brain. An extravasation of fluid blood in the brain from a blow will always produce some symptom of pressure. In fevers, when the inflammation runs exceedingly high, the vessels of the brain may be preternaturally distended; a rupture of some of them may and frequently does happen; and all the appearances seen by Mr. Foot may be produced from such a cause. It was their opinion, therefore, that the wound which was received by Mr. Clark was not the cause of his death.

And

And I am of opinion, that had Mr. Foot attended or enquired carefully into what happened before death, and had he reflected only that there was a possibility of such appearances being produced by a fever, he would not have been quite so positive in his decision. I shall readily allow him to be a good surgeon, and will grant him all the merit of large experience acquired both while a Mate in Germany, and while a pupil at the Middlesex Hospital ; but I must likewise think, that some respect is due to ten of the principal surgeons in London, whose opinion was formed on a careful comparison of the symptoms previous to death with the appearances on dissection ; and I am perfectly convinced, that those who gave evidence with respect to the first, are men

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of such integrity, that what they declared on so solemn an occasion, they would not swerve from at the bar of a court of justice. Mr. Foot's account of the case enabled the Examiners to judge as well as if they had been present; and his opinion, that the man might have recovered had proper care been taken of him, justifies their decision; neither indeed does it throw any reflection upon him, provided he is satisfied that it was not incumbent on him to make any enquiry about the state of the patient before death; and if his mind was perfectly at ease after giving such a positive opinion without the least qualification at the same bar, where the lives of two of his fellow-creatures were supposed to depend upon it.

This

This does not in the least arraign the justice at the Old Bailey : their verdict was founded in a great measure on what Mr. Foot said ; but other evidence appearing before the Examiners, gave very good reason for the opinion they subscribed to on that occasion. To suppose, that any of these gentlemen were under undue influence, in an affair of so much consequence, is too malicious to admit of a serious confutation. Such insinuations can proceed from the malevolence of faction only ; and though some men, to answer their diabolical purposes, may endeavour to enforce them on the credulous and deluded multitude, yet the good, the sensible, and unprejudiced, will reject the idea with horror. It is no difficult matter to assign the motive of this war-

war-hoop, this death-song against poor Balfe and Macquirk. If they are pardoned, administration is to be abused for remitting the guilt of blood. If they are executed, the very persons who so eagerly demanded their lives will exclaim, and with very good reason, against those pusillanimous ministers, who sacrificed the proper objects of royal mercy to a factious and inhuman clamour.

The case of Balfe and Macquirk was therefore like a two-edged sword, it would cut either way.—But administration wisely resolved not to advise an extension of the royal clemency, till it should be made manifest, even by the faculty themselves, that the convicts were deserving of a pardon. But this prudence

dence, which was not intended to give offence to any, has brought down the vengeance of Mr. Foot ; and he has dealt about him in a most unmerciful manner.

If Mr. Foot had confined his appeal to only such matters as were within his profession, as a surgeon, had made it purely a chirurgical performance ; it might have had some weight with the ignorant part of the public ; who are not always able to investigate intricate truths. But having introduced the affair of St. George's-fields, and an abundance of other political matter, all foreign to his subject, or at least to what ought to have the only subject of his appeal ; he has thoroughly convinced the world, (notwithstanding the

the assertion he sets out with, that he is unconnected with, and disclaims all party) that he is as warm a friend to a certain faction, and as zealously attached to the cause, as the most ambitious leader in it.

F I N I S.

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